



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

SCRAID C. MANN
ATTORNEY GENERAL

Honorable John C. Marburger
County Attorney
Fayette County
La Grange, Texas

Dear Sir:

Opinion No. O-891
Re: Necessity to license gravel
trucks which are used only
in crossing public road.

Your request for an opinion of this department as to the authority of the county to grant a lease of right of way of a public road to a gravel company, and the necessity of the registration of the trucks of this gravel company used only in crossing the public roads has been received by this department.

Our understanding of the facts stated in your letter is that the public road passes through the tract of land leased by the owner of the gravel pit, and that the owner of the gravel pit desires to use his trucks to haul gravel across the public road without registering said trucks as is required by Article 6675 of the Revised Civil Statutes of Texas.

We call your attention to the definition of "highway" as defined in Article 6674a, Revised Civil Statutes of Texas:

"The term 'highway' as used in this Act shall include any public road of thoroughfare or section thereof and any bridge, culvert or other necessary structure appertaining thereto."

Article 784 of the Penal Code of Texas reads as follows:

"Whoever shall wilfully obstruct or injure or cause to be obstructed or injured in any manner whatsoever any public road or highway or any street or alley in

any town or city, or any public bridge or causeway, within this State, shall be fined not exceeding two hundred dollars."

The powers of the Commissioners' Courts in Texas are strictly construed. 21 Tex. Jur., p. 704, says that:

"The Commissioners' Courts have only such regulatory powers over highways as have been expressly granted them."

There is no statutory authority for the Commissioners' Court of your county to enter into a contract of lease between the gravel company and themselves, and we think that Article 784 of the Penal Code, quoted above, clearly discloses the intention of the Legislature that the Commissioners' Courts may not permit any obstruction, nor themselves obstruct the highway in any way. We believe that the granting of a lease in this instance to permit the crossing of gravel trucks from one side of the highway to another would offer a serious traffic hazard, and there is no doubt in our minds that the courts would consider this an act of obstruction of the public highway.

We call your attention to the case of El Paso Electric Company vs. Leeper, 42 S.W. (2d) 863. In this instance the Commissioners' Court had permitted the placing of an electric wire pole on the right-of-way of the road near the boundary line, and the evidence showed that there was ample room on both sides of the pole for the passage of vehicles, and that the location of the pole did not interfere with or impede the traffic. The court held that although the Commissioners' Court could open and close a road when the road was abandoned, it had no authority to permit any obstruction to be placed upon a right-of-way. The opinion indicated that any obstruction or thing constituting a present source of danger was within the contemplation of Article 784 of our Penal Code.

Article 6675a-2 requires that:

"Every owner of a motor vehicle, trailer or semi-trailer used, or to be used upon a public highway in this State, and each chauffeur, shall apply each year to the State Highway Department through the County Tax Collector

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of the county in which he resides for the registration of each such vehicle owned or controlled by him. . . "

This particular Article exempts from registration implements of husbandry, farm tractors, farm trailers, farm semi-trailers operated or moved temporarily upon the highways of this State. These are the only exemptions made to this statute. There being no exemption for a gravel truck that passes only temporarily across a public highway, it must necessarily, by force of law, be registered as required by our statute.

We are enclosing a copy of an opinion of this department, written to the Honorable George H. Sheppard on January 23, 1939. We believe this opinion will be of some assistance to you in the solution of your problem. You are hereby advised that the county has no authority to enter into the contract considered, and that the gravel trucks operated on or across the highways of this State as that term has been defined by the statutes must be licensed as required by law.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Morris Hodges*
Morris Hodges
Assistant



MH:FG

APPROVED AUG 18, 1939

Gerard B. Mann
ATTORNEY GENERAL OF TEXAS